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UNITED STATES BANKRUPTCY COURT
DISTRICT OF ARIZONA

In Re:) Chapter 11
BCE WEST, L.P., et al.,) Case Nos. 98-12547 through
Debtors.) 98-12570-ECF-CGC
Jointly Administered
EID: 38-3196719) **OBJECTION TO MAV REALTY**
) **TRUST'S MOTION FOR PAYMENT OF**
) **ADMINISTRATIVE EXPENSES [DE 798]**
)

BCE West, L.P., Boston Chicken, Inc., Mayfair Partners, L.P., BC Great Lakes, L.L.C.,
BC GoldenGate, L.L.C., B.C.B.M. Southwest, L.P., BC Boston, L.P., BC Superior, L.L.C., BC
Heartland, L.L.C., BC Tri-States, L.L.C., Finest Foodservice, L.L.C., BC New York, L.L.C.,
R&A Food Services, L.P., P&L Food Services, L.L.C., Mid-Atlantic Restaurant Systems, Inc.,
BCI Massachusetts, Inc., BCI Southwest, Inc., BC Real Estate Investments, Inc., BCI Mayfair,
Inc., Progressive Food Concepts, Inc., BCI R&A, Inc., BCI West, Inc., BCI Acquisition Sub,
L.L.C., and Buffalo P&L Food Services, Inc., debtors and debtors in possession (the "Debtors")

1 file this Objection to MAV Realty Trust's Motion for Payment of Administrative Expenses. In
2 support of this Objection, Debtors state as follows:

3 1. On October 5, 1998 (the "Petition Date"), the Debtors filed voluntary petitions for
4 relief under Chapter 11, Title 11 of the United States Code (the "Bankruptcy Code"), in the
5 United States Bankruptcy Court for the District of Arizona (the "Court").
6

7 2. By the provisions of 11 U.S.C. § 503(a), any entity may file a request for payment
8 of an administrative expense.

9 3. On January 26, 1999, this Court signed the Order on Debtors' Fourth Motion
10 Authorizing Rejection of Leases of Nonresidential Real Property authorizing the rejection of the
11 lease between BC Boston, L.P. and MAV Realty Trust for store number 1963 located in West
12 Lebanon, New Hampshire.
13

14 4. On or about April 23, 1999, MAV Realty Trust ("MAV") filed a Motion for
15 Payment of Administrative Expenses [DE 798] (the "Motion").

16 5. MAV's motion seeks an order from the Court allowing an administrative claim in
17 favor of MAV for \$24,251.39, and requiring Debtors to make an administrative priority payment
18 in that amount.

19 6. Debtors oppose MAV's Motion because it is premature and the claim amount is
20 disputed. Administrative claims will be treated as an unclassified group entitled to payment as
21 provided by the Bankruptcy Code, but subject to the claims objection process incorporated in the
22 provisions of the Debtors' Plan of Reorganization (the "Plan") yet to be filed. Such
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1 administrative payments will be made in accordance with the provisions of the Plan as approved
2 by creditors and confirmed by the Court

3 7. This Court previously determined that Section 365(d)(3) does not create an
4 absolute right to immediate payment of such administrative claims, but rather that the timing of
5 such payment "is within the sound discretion of the bankruptcy court. ..." *In re Bryant Universal*
6 *Roofing, Inc.*, 218 B.R. 948, 953 (Bankr. D. Az. 1998, quoting *In re Orvco*, 95 B.R. 724 (9th Cir.
7 BAP 1989).

8 8.
9
10 relief requested and requests that this Court dismiss the Motion, or, alternatively, deny the relief
11

12
13 Respectfully submitted this 29th day of July, 1999.

14 DEBTORS AND DEBTORS IN POSSESSION

15
16
17 By: /s/ H. Rey Stroube, III
One of their Attorneys

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10 **CERTIFICATE OF SERVICE**

11 The undersigned hereby certifies that on July 29, 1999 the foregoing document was
12 served by E-mail or first class United States Mail, postage prepaid, on all parties on the Master
13 Service List #11 dated July 22, 1999 and to the following party of interest:

14 Daniel B. Greenberg
15 Wilson & Orcutt, P.C.
16 201 Great Road
17 Acton, MA 01720

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_____/s/ Laura DeWitt